

Extract from the minutes of a meeting of the Public Rights of Way Committee held on 12 March 2018

34 Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 12 (part), Parish of Lower Withington

The Committee considered a report which detailed an application from Mr J Kennerley and Son of Shellmorehill Farm, Lower Withington requesting the Council to make an Order to divert part of Public Footpath No.12 in the parish of Lower Withington.

In accordance with Section 119(1) of the Highways Act 1980, it was within the Council's discretion to make an Order to divert a public footpath if it appeared to the Council to be expedient to do so in the interests of the public or the owner, lessee or occupier of the land crossed by the path.

The land over which the section of footpath to be diverted and the proposed diversion ran belonged to the Applicants. The section of Public Footpath No.12 to be diverted ran along a stone surfaced track to Shellmorehill Farm. The footpath then continued past two dwellings and crossed a holding area leading to a milk parlour, before passing through collecting and silage yards to exit through a slurry tank which obstructed the line of the path. The footpath continued across a field and a farm track until it joined Public Footpath No.19 Lower Withington.

Within the farm yard area there were three large gates for controlling the movement of cattle between the yards for milking and these needed to be opened and closed by users in order to walk the path. A permissive path was in place to pass the slurry tank which obstructed the footpath.

The proposed route would commence near the start of the track to Shellmorehill Farm at Point A on Plan HA/120 and run along field boundaries until it joined Public Footpath No.18 Lower Withington at Point J on Plan HA/120. The route would be 2.5 metres wide and have a grass surface. Kissing gates and a footbridge would be installed on the route.

The Committee noted that no objections had been received during the informal consultation and noted the comments from the Applicant, Mr Morrow, Mr & Mrs Mitchell and the East Cheshire Ramblers.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would allow the Applicant to improve the privacy and security of their farm and home and improve the safety for users. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.12 Lower Withington by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/120, on the grounds that it is expedient in the interests of the owners of the land crossed by the path.